IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1851 OF 2006

M/s. HDFC Chubb General Insurance Co. Ltd. ...Appellants
Vs.
Smt. Shantidevi Rajbalsingh Thakur & Anr. ...Respondents

Shri S.R. Singh i/b. M/s. S.R. Singh & Co. for the Appellants
Mr.M.G. Barve for Respondent Nos.1 and 2

CORAM: SMT.ROSHAN DALVI, J.
DATED: 5TH JULY, 2007

JUDGMENT.

1. The Appellant, which is an Insurance Company, has challenged the Judgment dated 16th June, 2006 of the Member of MACT, Thane granting compensation of Rs.4,12,500/- to the Respondent No.1 herein with interest thereon at 6% p.a along with costs and directing investment of a part of the amount.

2. The order of compensation came to be passed in an application of Respondent No.1 who was the mother of the deceased driver of a motorcycle against her husband, who was the owner of the motorcycle and against the appellant Insurance Company on the ground that the husband was

bound to compensate the wife for the death of her son, the victim of the accident, and that the liability had to be indemnified by the appellant Insurance Company since the vehicle was insured with them. The accident took place on 28th June, 2004. The deceased is stated to have been earning a gross sum of Rs.4000/- p.m out of which Rs.3000/- was shown to be by way of his salary and Rs.1000/- by way of specified petrol allowance, which he earned upon supervising his father's business and for which the firm of his father issued the certificate. The deceased was 24 years old at the time of his death. The mother's application was made under Section 163-A of the Motor Vehicle Act (M.V. Act).

3. The Insurance Company has necessarily challenged the Judgment on the ground that the deceased who was driving the motorcycle was not a "third party" within the meaning of the Act or under the Insurance Policy which constitutes a contract between the Insurance Company, and the Insured, his father. It is also their contention that the deceased was not a "victim" under Section 163-A of the Act or "any person" under Section 147 of the M.V. Act.

4. The other contention of the appellant Insurance Company is that the deceased himself was a tort-feasor, and hence, he

cannot be termed as a "Victim" under Section 163-A of the M.V. Act. It is also their contention that the applicant earned more than Rs.40,000/- per annum and hence, claim under Section 163-A is not maintainable.

5. The learned Judge has considered each of these aspects as separate issues. He has considered various Judgments and held that the claim under Section 163-A was maintainable whether or not the deceased was a tort-feasor and because the deceased earned less than Rs.40,000/- per annum. He has also held that the deceased was a "third party" within the meaning of M.V.Act and "any person" under Section 147(1)(i) of the M.V. Act as well as a "victim" under Section 163-A of the M.V. Act.

6. It would first have to be decided whether the deceased fell within the aforesaid terms and if so, whether the claim under Section 163-A could be legitimately made, without considering his tortious liability and upon considering his annual income.

7. The Contract of Insurance covered the owner-driver (the father of the deceased), the pillion passenger and the mandatory third party risk. Despite a clause in that behalf, it did not cover "other named person" or paid driver. The

deceased was the son of the owner of the motorcycle, and at the relevant time was not covered under the Policy. The claim under Section 163-A of the M.V. Act has been made on the premise that the deceased was a “victim” and a “third party”. We must, therefore, see under which clause of the policy or provision of the M.V. Act the driver of the motorcycle, who was not covered under an express clause of the Policy could be covered as a third party or a victim.

8. Section II of the Insurance Policy deals with liability to third parties. Under that Section the Insurance Company agreed to indemnify the insured in the event of an accident arising out of the insured vehicle against all the sums which the insured would become legally liable to pay in respect of death or bodily injury to “any person” including occupants carried in the insured vehicle. This liability is under Section 147 of the M.V. Act. Consequently under that clause the Insurance Company agreed to indemnify any driver who drove the vehicle on the order of the insured (Respondent No.2) or upon his permission and who followed the terms, exceptions and conditions of the policy. This was the indemnity against third party liability. Consequently it was to indemnify for any liability to any third party. This indemnity was towards any act of the driver. Such indemnity means and includes a Contract or promise to save

the insured from the loss caused to him by the act of the driver. Hence, if the driver was liable to any third party and consequently the owner incurred vicarious liability, the Insurance Company would indemnify the owner of the vehicle, provided the driver fell within the terms, exceptions and conditions of the policy. This necessarily implies that the driver was at fault. He would, therefore, incur liability. That would be tortious liability. The Insurance Company would, therefore, indemnify the owner against any third party liability. This indemnity is the statutory liability of the Insurance Company in case of contracts of such insurance. The purpose of the indemnity is to pay compensation to a third party i.e, a party who is an outsider – other than the 2 parties to the contract of Insurance – the Insurance Company and the insured or any other person capable of being insured under the contract of insurance. Since the "others"- the world at large, viz., the pedestrians, passers-by etc., who can never be one of the contracting parties, but who may be involved in an accident, the Insurance Company owes a statutory liability to indemnify the owner/driver due to whose act some other innocent party has suffered death or injury. Such a third party, therefore, can never be the person who could have been one of the contracting parties or who could have been covered under the contract of insurance/policy, by way of payment of additional premium.

9. The learned Judge has considered the contract of Insurance specially contained in Section II(1)(i) of the Policy. He has correctly shown the amount of Rs.160/- paid as premium towards the statutory third party liability. He has also considered the third party liability under Section II. He has also considered the personal accident cover for owner driver under Section III. Unfortunately there is no insurance cover for the driver other than the owner. Consequently the claim of such driver cannot be entertained by the Insurance Company, there being no cover in that regard.

10. Section 147 of M.V. Act deals with requirements of Policies and limits by liability. Under Section 147(1)(b)(i) the liability is in respect of death or bodily injury to any person, including the owner of the goods or his representative carried in the vehicle or damage to property of a third party. The term “any person”, therefore, applies to the persons other than the insured and the persons coverable under the policy. The two parties to the contract are the Insurance Company and the insured. The third party is, therefore, another.

11. It is contended on behalf of the Respondent No.1 that the driver of the motorcycle who is not the insured would be

the third party. It will have to be seen whether the term "third party" or "any person" would mean and include the driver of the motorcycle at the relevant time i.e., the deceased. For the liability to third parties Section II of the contract of Insurance covers occupants carried in the vehicle. Under the aforesaid Section "any person" is shown to be the owner of the goods or his representative carried in the vehicle. The indemnity of the Insurance Company necessarily implies damage caused by the driver which can be indemnified. Hence, unless there is primary liability of the driver, the liability of the Insurance Company as the indemnifier would not arise. Consequently under that Section and as per the aforesaid clauses of the contract of Insurance, the driver who owes certain liabilities to third parties by a tortious act can be indemnified. Consequently he himself cannot be compensated as a victim; he would be only indemnified. Similarly the driver would not also be an "occupant carried in an insured vehicle"; that occupant would necessarily be someone other than the driver. In this case that other person would be only the pillion rider. The pillion rider is specifically covered under the contract. A premium of Rs.35/- is paid for personal accident cover for pillion passengers. The pillion rider has been compensated.

12. The contract of insurance makes no mention of the

insurance policy covering any "victim".

13. It is in this context that the claim of Insurance Company that the deceased was a tort-feasor and, therefore, compensation on account of his death or bodily injury could not be given by the Insurance Company under Section II of the contract of Insurance stands to reason. The indemnity to be provided necessitates the liability to be incurred as a condition precedent. That liability would be upon the tort of negligence. This indemnity is for liability to a third party. It is not in respect of the driver. No premium is paid for personal cover of any other named person or driver. Consequently upon reading Section 147 of M.V. Act and Section II of the Contract of Insurance, the case of the deceased being covered under the policy does not arise.

14. The claim by Respondent No.1 as a mother of the deceased son is, therefore, purposefully made not under Section 147 but under Section 163-A of the M.V. Act, in which the claimant is not required to plead or establish that the death or disability was due to any negligence or default on the part of the owner or any other person – in this case the driver, and the insurer is liable to pay, in case of death or permanent disablement, compensation as per Schedule II to the legal heirs of the victim. It will, therefore, have to be

seen whether the deceased, unfortunate that he was, and who met with his death, was "a victim" under Section 163-A of M.V. Act and whether he was covered under the contract of Insurance as such victim.

15. The learned trial Judge has considered that in view of the clause under Section 163-A(2) of M.V. Act even tort-feasors are covered. The observation at the end of para 6 says the only exception is made on the ground of "total absence of contract of Insurance". It is not understood what such "total absence" means or implies. Either there is a clause covering a particular claim or there is no such clause in the Insurance Contract. In this case there is no clause covering the driver of the motorcycle or any other named person. In that regard it would be total absence of any such contract to cover any driver, other than the owner himself, as driver.

16. The learned trial Judge has held that the deceased was a victim and hence, fell under Section 163-A and his legal heir could claim compensation, if the vehicle was insured, as a claim of a victim. The enunciation is oversimplistic. Though under Section 163-A the negligence of the driver has not to be seen if the claim is in respect of the deceased earning less than Rs.40,000/- per annum, we would have to

see whether he would be covered under the term "victim" merely because he unfortunately died in the fatal accident.

17. The claim in this case is made under Section 163-A of the M.V. Act. It is contended on her behalf that her son having died in the accident, he was the "victim" of the accident. Consequently under Section 163-A she, as the legal heir of the victim, is entitled to claim compensation as such.

18. Section 163-A has been incorporated in the M.V. Act 54 of 1994 and has come into effect from 14th November, 1994. The contention on behalf of the claimant that the term "Victim" in Section 163-A implies and includes any party who suffers an injury or succumbs to the accident, is required to be tested in the light of the objects and reasons for which the enactment came to be made.

19. The statements of objects and reasons of the amending Act 54 of 1994 is published in the Government of India Gazette II Section 1 No.71 dated 12th September, 1994. It shows various reasons for which various amendments came to be made under that enactment being the amending Act of 1994. The statements of objects and reasons further state that those amendments have been made in view of the

recommendation of the Supreme Court in the case of **M.K. Kunhimohammed Vs. P.A. Ahmedkutty (1987) 4 SCC 284** . In paragraph 14 of the Judgment certain suggestions for the required amendments in the proposed Amendment Act, which was then on the anvil in 1987, were made. There are several suggestions in respect of provisions with which we are not concerned. One of the suggestions is with regard to hit-and-run motor accidents. The Supreme Court has observed that such accidents were increasing in number. The society and the State, which are responsible for a large number of motor vehicles being put on road, should carry also the responsibility of protecting the interests of the innocent victims of hit-and-run motor accidents. They have, therefore, suggested a higher compensation for such cases in place of the compensation which was seen to be highly inadequate.

20. The recommendations of the Supreme Court were not all incorporated in the Amendment Act of 1988, though made in the Judgment decided on 1st September, 1987. These have been considered, several years later, in the Amendment Act of 1994. There were several amendments in 1994. Consequently the statement of objects and reasons also shows several varied and distinct reasons for the amendments in separate sections of the Act. One of these

objects and reasons, as shown in the gazette notification is contained in clause (1)(i). That object runs thus :-

> "(i) Provision for enhanced compensation in cases of "no fault liability" and "hit-and-run" motor accidents.

21. The provision for hit-and-run motor accidents is found in Section 161 onwards of the M.V. Act. Those sections are contained in Chapter XI of the M.V. Act. The chapter is titled as "INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS". Sections 145 to 164 fall within that Chapter. This includes the hit-and-run cases. These Sections relate to the Insurance against third party risks. Section 163-A is one of those Sections. It also, therefore, relates to Insurance against third party risks.

22. In this background, the expression "Victim" in Section 163-A needs to be considered. It may be repeated that the recommendations of the Supreme Court in the Judgment supra state about "innocent victims of hit-and-run motor accidents". The expression"Victim" does not appear anywhere in Chapter XI except Section 163-A. Section 163-A was newly incorporated in 1994. It follows the Sections relating to hit-and-run motor accidents contained in Sections 161 to 163. In hit-and-run cases the victims are

only third parties who are passengers, passers-by etc. Section 161 inter alia defines a hit-and-run motor accident. Sub Section 3 thereof specifies the amount of compensation payable. Section 162 deals with refund of certain cases of compensations paid under Section 161. Section 163 lays down the scheme for payment of compensation in case of hit-and-run motor accidents. Section 163-A, which follows immediately thereafter, lays down special provisions as to payment of compensation on structured formula basis. It lays down the liability of the owner or the insurer in case of death or disablement arising in an accident out of the use of the motor vehicle to the victim or his legal heirs. Sub Section 2 thereof specifically lays down the non-requirement to plead or establish negligence or default of the owner of the vehicle for payment of compensation to such victim or his legal heirs. Consequently reading Sub Sections 1 and 2 of Section 163-A of the M.V. Act together, the concept, ambit and extent of the term "Victim" should be understood. The Section, for first time, allows payment of compensation on a structured formula basis without proof of negligence (except, of course, the specified amount of no-fault liability under Section 140 of the M.V. Act). The payment has to be made to the victim or the legal heirs of the victim. The payment has to be made by the owner or the Insurer. This section forms a part of the chapter relating to third party risks and follows

close on the heels of the provisions relating to hit-and-run motor accidents. The word "Victim" must, therefore, be understood and incorporated in the sense that it relates to compensation to be paid to those victims who are third parties or to those victims who may have been involved in a hit-and-run motor accidents.

23. It must be appreciated that the standard of proof required by an innocent victim of hit-and-run motor accidents was made less stringent because they find it impossible to prove negligence of a driver of a motor vehicle whose identity cannot be ascertained inspite of reasonable efforts for the purpose. Hence if such victim fell within a specified income bracket and applied for compensation on a structured formula basis, he need not go through the normal channel to prove negligence and the extent of his injury and claim compensation on the basis of actual liability incurred by the tort-feasor. Such victim must, therefore, necessarily be a person other than the tort-feasor himself. A tort-feasor, who, because of his own negligence, met with death, however unfortunate, cannot, therefore, be equated with a victim of the accident.

24. The object can be viewed from yet another angle. The innocent victims of hit-and-run motor accidents who are

taken to be passers-by, pedestrians etc. are the ones who fall short of the required evidence. The passengers who are in the vehicle itself or the owner or his driver, or gratuitous or paid employee cannot be put in the same position as innocent victims who are other party viz., third parties. It is in this context that the extent of the term "victim" must be appreciated, specifically given the fact that it forms a part of Section 163-A in the same chapter relating to 3rd party risks and hit-and-run motor accident cases.

25. The learned single Judge of the Delhi High Court has considered the history of the legislation contained in Section 163-A in the case of **United India Insurance Company Vs. Kaushalya Devi in MAC Application No.898 of 2006 decided on 14th March, 2007**. It is observed that Section 163-A was introduced in the Act by way of Social Security Scheme. It is a Code by itself. It came to be legislated upon the report of a Review Committee for a claim based on a conciliation under a structured compensation formula rather than claiming through the normal channels.

26. That is in keeping with the objects and purpose of the amendment itself. The object was not to compensate a negligent driver of a motor-vehicle who unfortunately was a victim of his own tort.

27. It may be mentioned that Section 147(1) (a)(i) came to be amended also by the Act 54 of 1994. Under that amendment the term “injury to any person” came to be substituted by the term “injury to any person, including owner of the goods or his authorised representative carried in the vehicle”. It came to be held by the Apex Court, in the judgment which shall be referred to presently, that the addition of the words “including owner of the goods or his authorised representative carried in the vehicle” are not merely clarificatory or amplificatory, but that from and after that amendment only the owner of the goods or his authorised representative could claim compensation as “any person”. Prior to that date such owner of the goods or his authorised representative could not claim compensation under the expression “any person”.

28. The term “any person” or “third party” under the aforesaid provision contained in Section 147(1) (a)(i) would, therefore, have to be considered. It may be mentioned that the interpretation of the term “Victim” in Section 163-A would be governed by the interpretation of the terms “any person” or “third party” in Section 147. Hence the Counsel for both the parties have drawn the Court's attention to several judgments, not strictly under Section 163-A showing

the case of victims thereunder, but essentially under Section 147 of the M.V. Act.

29. The precedents with regard to the liability of the Insurer and the scope of the term “any person” or the “third party” would have to be seen to consider the liability if at all of the appellant Insurance Company.

30. In the case of **United India Insurance Company Limited Vs. Etnoori Yadagiri Goud, 1995 ACJ 600**. It was held that a driver of a motorcycle belonging to his brother was not a third party when the motorcycle was insured for third party risk. It has been observed in that case that the person driving the motorcycle himself does not fall under the term “third party” in Section 147(1) of the M.V. Act. The contention that the deceased could be considered as a passenger when no extra premium was paid for covering the risk of passenger was rejected. Even the contention that the deceased being the brother of the owner can claim compensation in the capacity of the owner was rejected by the Andra Pradesh High Court.

31. In the case of **Minu Mehta Vs. Balkrishna, 1977 ACJ 118 (SC)** considering Section 95(1)(b)(i) of the M.V. Act, 1939 which is analogous to Section 147(1) of the M.V. Act, 1988, it

has been observed that the policy of Insurance must be a policy which insures the person against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The liability for death or bodily injury must be covered by the insurance. In that case only upon proof of negligence, can an owner be held liable vicariously for the acts of his servant and only if the insurance cover extends to such liability arising out of the use of the vehicle by the person driving the vehicle could the insurance company be made liable. In that case the deceased was observed to be in the position of the owner himself, in the sense that he was driving the vehicle belonging to his brother who was the owner of the vehicle. The Insurance Company covered third party risk. It was held that the driver of the vehicle would not constitute a third party for the purpose of Section 95 of the Act. Drawing from the case of **Cooper Vs. Motor Insurance Bureau, 1985 QB 575 (AC)** it was held that “A policy covering him 'in respect of third party risks does not include the actual driver of the vehicle at the time of the use of the vehicle which gives rise to the damage under Section 145 of the Road Traffic Act, 1972. Hence, the driver of the vehicle was held excluded from the expression “third party” in Section 147(1)(b)(i) of the M.V. Act, 1988.

32. In the case of **New India Assurance Company Limited vs. Babasaheb Anna Mali, 2002 ACJ 642** a Pillion rider was also held not covered under third party policy in the absence of extra premium paid for his coverage. Hence, it was held that the Insurance Company could not also be saddled with no fault liability in such a case. In this case the Pillion rider has been specifically covered. Hence, separate premium for the Pillion rider has been paid. Consequently the pillion rider was compensated. It has been held in para 7 of this judgment that the proposition that the expression "third party" is an expression of wide import covering all persons except the insured and insurer is misconceived and cannot stand legally on face of proviso (ii) to Section 95(1) which is analogous to Section 147(1)(ii) and which provides that insurance cover is not available to the passengers except where vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment.

33. In the case of **New India Assurance Company Vs. Asha Rani (2003) 2 SCC 223 = 2002 AIR SCC) 5259** Section 147 (1)(b)(i) prior to the amendment of 1994 was considered in terms of injury to the owner of the goods or its authorised representative carried in a goods vehicle. It was held in that

case that the statutory third party risk under Section 147 did not extend to death or bodily injury to any one other than the owner of the goods or the authorised representative carried in the vehicle prior to the 1994 amendment. Considering the objects and reasons of the Amending Act for statutory third party liability it was held that the addition of the words "including owner of the goods or as authorised representative carried in the vehicle" was not clarificatory or amplificatory of the pre-existing statute. It was held that the expression showed that the legislature made it compulsory for the insurer to insure third party risks even in case of a goods vehicle. Therefore, in cases prior to the amendment of 1994, the insurer was not liable to pay compensation to the owner of the goods or his authorised representative carried in the goods vehicle for death or bodily injury. The judgment considered the objects and reasons of Clause 46 of the Amendment Act 54 of 1994 by which amendment to Section 147(1)(b)(i) came to be made to specially include the owner of the goods or its authorised representative carried in the vehicle for the purpose of the liability under the insurance policy. Consequently in that case the case of **New India Assurance Company Vs. Satpal Singh (2000) 1 SCC 237** was specifically overruled. Though that case related to a goods vehicle and considered the distinction in the definitions of "goods vehicles" "public service vehicles", and

"carriage transport vehicles" under Section 2(8)(25)(29) and (33) of the 1939 Act (Per S.B.Sinha , J.), the substance of what was held in that case was that a very wide interpretation on the words "any person" could not be placed. Consequently in paragraph 26 of the judgment it was held that the expression "any person" must be attributed having regard to the context in which they have been used i.e. "a third party". Hence, it was held that the owner was not statutorily enjoined to get his vehicle insured for any passenger travelling in a goods vehicle and consequently the insurers would not be liable therefor. In paragraph 28 of the judgment it has been specially observed that the owner of the passenger carrying vehicle must pay additional premium for covering the risks of the passengers. Hence, the case of **Satpal Singh** has been overruled observing that if the ruling in that case were to prevail the owner of the vehicle would not need to take out an insurance policy. He would be deemed to have been covered under the policy even when no premium is paid.

34. In the case of **New India Assurance Company, Bijapur Vs. Smt. Kusum 2003 (3) T.A.C 423 (Karnatak)** it has been held that the phrase "any person" would not include any and every person who suffers an injury or whose property has been damaged by an accident involving the

motor vehicle. Third parties are only pedestrians, passers-by and do not include any person in any vehicle including gratuitous passengers. In that case, case of **Asha Rani** holding that prior to the amendment in 1994 the owner of the goods or its authorised representative carried in a goods vehicle was not covered under the expression "any person", was considered.

35. In the case of **Appaji Vs. M. Krishna 2004 ACJ 1289** in which the parents of the deceased driver of a scooter, who sustained fatal injuries applied under Section 163-A of the M.V. Act for compensation from the Insurance Company upon the claim of indemnity. It was held that the Parliament did not intend to provide compensation to the person responsible for the accident on structured formula basis. Consequently a person could not sue for compensation upon the tort of negligence on account of his own rash, negligent and imprudent act. It was observed that if that was so, a person could base his case upon his own fault and negligence and make an Insurance Company to pay for the same which is not the purpose of the legislation. In that case the meaning of the word "Victim" from Black's Law Dictionary and Chambers 20th Century Dictionary came to be seen. Since the commonsense meaning of the term "Victim" is a sufferer or a prey, it implies a person who has

suffered a pecuniary damage as a result of another's activities. Consequently it is in that sense that the term "victim" in Section 163-A of the M.V. Act also must be understood. It can, therefore, not include the person who is a victim of his own action. He must be a victim in contradiction to the victimiser or the one who falls victim to his own action.

36. The observation in paragraph 19 of the Judgment is that while road accidents generally affect innocent third parties or those making use of public transport, cases where the owner or driver of the vehicle alone suffers on account of his rash and negligent driving are not uncommon. Drunken driving, speeding, in the high performance new generation automobiles including two-wheelers account for a large number of accidents. Quite often these accidents kill or wound even the person driving the vehicle. Parliament did not intend to provide for compensation for such persons and consequently Section 163-A cannot be taken to be a panacea for all ills concerning motor accidents.

37. Consequently what is imperative is that under a policy of Insurance the owner must be insured against any liability which arises against him. If the liability arises due to the negligence of another, the owner would not incur vicarious

liability. Consequently the Insurance Company would not have to indemnify such owner. Hence, considering earlier cases where the driver had sustained injuries due to his own driving and where the negligence lay at his door, it was held that in such case no liability arises against the driver and consequently no such liability arises even against Insurance Company.

38. In the case of **United India Assurance Company Ltd. Shimla Vs. Tilak Singh (2006) 4 SCC 404** it has been held that under Section 147 of M.V.Act an injury to a gratuitous passenger caused in a private vehicle would not be covered as a third party risk if the insurance policy does not specifically cover such a passenger. In that case the pillion rider on a scooter driven by the owner of a vehicle not being specifically covered under the insurance policy was held not to be a third party. Hence his claim under a statutory third party risk simplicitor was rejected as he was a gratuitous passenger. This judgment referred to the case of **Asha Rani** supra and the decision in the case of **Satpal Singh** supra including the other previous judgments for the liability of insurance companies to gratuitous passengers to conclude that statutory third party liability cannot cover a pillion rider or any other such gratuitous passenger in a private vehicle.

39. In the case of **The Oriental Insurance Company Limited Vs. Meena Variyal in Civil Appeal No.5825 of 2006** the claim was made under Section 166 on behalf of the deceased employee driver of the owner of the car upon the negligence of the driver of the car. In that case there was no special contract covering the deceased driver who was driving along with his companion. It was observed that though the M.V. Act is a beneficial legislation and summary procedure alone may be followed by a Tribunal in dealing with a claim, the contract of insurance is a contract of indemnity. Consequently when a car belonging to an owner and driven by the driver employed by the insured meets with an accident, the primary liability is that of the driver. Hence, the owner becomes vicariously liable to compensate the victim. That vicarious liability of the owner is indemnified by the Insurance Company. Under Section 166 of the M.V. Act the third party is entitled to show the negligence of the driver and consequently the owner's vicarious liability and claim indemnity from the Insurance Company. Upon considering the necessity for Insurance against third party risk under Section 146 of the M.V. Act, as well as the ambit of Section 147 of M.V. Act, it has been held in para 11 of the judgment that the compulsory cover required under Section 146 is only for liabilities relating to the person and property of third

parties. Consequently it has been held that the Insurance Company cannot be held liable to indemnify the owner for the death of one of his employees who was the driver of the vehicle when the liability does not arise under the Workmen's Compensation Act. Consequently it was held that except for third parties, the third party cover would not extend to any person, and the Insurance Company cannot be made automatically liable to cover the driver of a vehicle.

40. It is, therefore, seen that the case of **National Insurance Co. Ltd. Vs. Swaran Singh (2004) 3 SCC 297** has been overruled. The case of **Tilak Singh** supra and **Asha Rani** supra narrowing the ambit of the term “any person” to mean and include only a “third party” has been upheld and consequently following upon **Asha Rani** in which a passenger travelling in a goods vehicle was not included under the said expression and following **Tilak Singh** in which case gratuitous passenger in a private vehicle was held not included, it was held in the case of **Meena Variyal** that the driver who was the employee of the owner of the car was also not covered under the statutory third party risk.

41. Hence, the case of **New India Assurance Company Limited Vs. Ranglal Panju Nikam in F.A.No.1252 of 2005** before the Division Bench of this Court at Aurangabad

restricted the liability of the Insurance Company to the contractual amount of Rs.25,000/- for risk to the gratuitous passenger which was covered only to that extent. The owner being held liable to compensate the claimant to the entire remaining extent, must be read in accordance with ultimate decision of the Apex Court in the case of **Meena Variyal** supra.

42. This shows how a very wide interpretation for the cover of third party liability cannot be given so as to extend to all the persons inside the vehicle in the absence of a specific cover for those persons and the payment of specific premium in respect of such cover. These Judgments show how the term “any person” or “third party” has been interpreted by the Apex Court.

43. The claim in this case is made under Section 163-A by the mother of the deceased driver as his legal heir. It is contended on behalf of the respondent no.1 (the original claimant) that the deceased was a victim under Section 163A since he succumbed to the injuries which arose out of the accident when the motorcycle skidded and he fell off the highway. It is contended that the claim having been made under that section, the tort of negligence, if any, is not required to be seen. He, as the victim, is, therefore, taken to

be a third party and is claimed to be covered under the mandatory third party cover required to be taken under Section 146 of M.V. Act as he was not expressly covered under any clause of the policy.

44. Though the application is under Section 163-A, which does not require proof of negligence for claiming compensation, the requirements of the policy and the limits of liability of the Insurance Company would be under Section 147 of M.V. Act and no other. Consequently the term “any person”, as including only a third party which, upon a consideration of the aforesaid cases excludes the gratuitous driver, a gratuitous passenger, the employee of the owner or a pillion rider in the absence of a specific cover must apply to the driver of the motorcycle who met with the fatal accident also. Upon the same analogy therefore, the “victim” under Section 163-A would exclude these persons. It would include only third parties which are taken to be pedestrians, passers-by and such other persons not in the motor vehicle and who specifically could not be covered, under the Insurance Policy. It would also not include a person himself negligent and on whose account even the owner would not be vicariously liable as he cannot claim damages. As held in the case of **United India Assurance Co. Ltd. Vs. Kantabai 1991 ACJ 22,** by the Division Bench of this Court it is

difficult to entertain the contention that the liability in respect of tort-feasor himself would be covered by the Insurance Company and that such tort-feasor (or his legal heir) could sue the Insurance Company under the Contract of indemnity or under the Law of Torts to pay compensation. Hence no driver can claim compensation for the accident *de son tort*. Consequently the liberal construction of Section 163-A of the M.V. Act sought by the Advocate of Respondent No.1 cannot be granted, ignoring the very purpose of the legislation and which would render it liable to large-scale abuse of drivers neither confirming with standards of care and caution and owners not taking cover against such action by a special contract with Insurance Companies upon payments of the requisite premium to cover such risks.

45. Consequently the claim of Respondent No.1 granted by the learned trial Judge cannot be sustained against the Appellants. The appellant Insurance Company is not liable to indemnify the owner for the death of the gratuitous driver of the insured motorcycle (since he was not otherwise covered under the Workmen's Compensation Act) as a “victim”. Hence, the Appeal succeeds. The Judgment and Order of the learned trial Judge dated 16th June, 2006 granting compensation of Rs.4,12,500/- against the appellant Insurance Company is set aside. The liability of

respondent no.2, who never opposed the original claim and who has not appeared in this Appeal also, is not interfered with.

46. The claimant has not filed any cross appeal or made any cross objections with regard to the extent of the compensation. That aspect is, therefore, not dealt with.

47. The Advocate for Respondent No.1 has made an application for being issued a certificate to appeal to the Supreme Court under Article 132(1) and Article 133(1)(a)&(b) of the Constitution of India on the ground that a substantial question of law of general importance is required to be decided by the Apex Court. It is seen that this question has been clearly decided in the aforesaid Judgments supra. Hence, the application is rejected.

(SMT. ROSHAN DALVI, J.)